



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes CNL

Introduction

A Tenants' Application for Dispute Resolution was filed to request cancellation of a 2 Month Notice to End Tenancy for the Landlords' Use of the rental unit (the "Notice").

The parties listed as Tenants and the parties listed as the Landlords appeared with the Landlords' attorney, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

As a preliminary issue, the Tenants raised the issue of jurisdiction with respect to the Landlords' application. I heard testimony from both parties with respect to jurisdictional issues and the basis for the Notice to End Tenancy in the event I found jurisdiction to resolve this dispute.

As a second preliminary issue, the Landlords' attorney requested an adjournment. In considering this request, I am guided by Rule of Procedure 6 which provides that a dispute resolution hearing may be adjourned three days prior to the scheduled hearing if the consent of the other party is given. In the event that the other party does not consent to an adjournment, a party may request an adjournment by disclosing the circumstances beyond their control necessitating the adjournment.

In assessing whether an adjournment request should be granted the following criteria can be considered pursuant to rule 6.4:

- whether the purpose for which the adjournment is sought will contribute to the resolution of the matter in accordance with the objectives set out in Rule 1 [objective and purpose];
- whether the adjournment is required to provide a fair opportunity for a party to be heard, including whether a party had sufficient notice of the dispute resolution proceeding;

- the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment; and
- the possible prejudice to each party.

I have denied the Landlords' request for an adjournment of this hearing. I find that the request for the adjournment rises out of the Tenants' alleged late service of the Hearing Package and the legal counsel's subsequent late submission of evidence. The legal counsel stated that he faxed into the Residential Tenancy Branch a package of evidence one business day prior to the hearing. The hearing was scheduled very quickly due to the Tenants seeking to cancel the 2 Month Notice to End Tenancy. In declining to adjourn the hearing, I have allowed the legal counsel to deliver his evidence package, which was not in the hearing file, and to delay a Decision until the evidence was delivered and considered.

Issue(s) to be Decided

Is there jurisdiction under the Residential Tenancy Act (the "Act") for this matter and do I have jurisdiction to resolve this dispute?

Is there a tenancy between the parties?

Is the Notice to End Tenancy valid or should it be cancelled?

Background and Evidence

I heard testimony from the Tenants that the Tenants and the Landlords are four of eight siblings, that the subject property was purchased by the Tenants' father for the female Tenant to live in and that she does not pay rent, rather a sum of \$1,299.44 to be paid towards the principal of the mortgage. The male Tenant stated that he and the female Tenant have lived in the house since 1999 and that there is no tenancy.

The Tenant stated that the parties' father has, since the purchase of the property, passed away, leaving his estate, including the subject property, to the parties' mother. The mother has since passed away and the subject property is still in probate and thus, still in their mother's name.

The Tenants submitted a copy of a 2 Month Notice to End Tenancy for Landlord's Use, which was dated March 14, 2011, for an effective move out date of May 30, 2011.

The Landlords' attorney responded by agreeing that the subject property was purchased in 1999, that the parties' father died in 2003 and that the parties' mother died in 2005. The attorney submitted that there is no document which gives the Tenants a measurable interest in the property and in the father's will, the father did not acknowledge any interest in the property for the Tenants.

The attorney submitted that the male Tenant and another sibling were appointed the original executors in the mother's will and did nothing to probate the estate for five years. Due to this, the attorney submitted that he made application to the Supreme Court of British Columbia to have the original executors replaced by the Landlords, which application was granted.

The attorney argued that the subject property has fallen into a state of disrepair and that it was necessary to start the eviction process in order to complete the repairs to be able to sell the property. The attorney further argued that this matter is not before the Supreme Court and that the Tenants have a license to occupy, which gives the Residential Tenancy Branch authority to decide this dispute.

The evidence submitted by the Landlords' attorney included an affidavit by each of the Landlords, copies of the father's and mother's wills, a document listing the parties' mother as registered owner of the subject property, a Distribution of Estate listing the eight siblings as having a 1/8 Residue of the Estate in the mother's estate, an application to the Supreme Court of British Columbia requesting the removal of the original executors to be replaced by the Landlords, a document listing the Landlords as owners in fee simple by virtue of being named as executors of their mother's will and original photos of the subject property.

Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

Only the evidence and testimony relevant to the issues and findings in this matter are described in this Decision.

Section 58 (2) (c) of the Residential Tenancy Act states, in part, that the director must determine the dispute unless the dispute is linked substantially to a matter that is before the Supreme Court.

Having reviewed the testimony and the evidence, particularly the submissions of the Landlords with the submission of the Application and Order to the Supreme Court of British Columbia, I decline to determine this dispute as I find that this dispute is linked substantially to issues and matters before the Supreme Court.

Alternatively I find that I likewise would have no authority to decide this dispute as I do not find the Residential Tenancy Act applies.

Residential Tenancy Policy Guideline 27: Jurisdiction provides for the following interpretation of the intent of the *Residential Tenancy Act* and *Manufactured Home Park Tenancy Act* (the Acts). Under the heading Excluded Jurisdiction, in part:

5. TRANSFER OF AN OWNERSHIP INTEREST

Similarly, a tenancy agreement is a transfer of an interest in land and buildings, or a license. The interest that is transferred, under section 1 of the Acts, is the right to possession of the residential premises. If the tenant takes an interest in the land and buildings which is higher than the right to possession, such as part ownership of the premises, then a tenancy agreement may not have been entered into. In such a case the arbitrator may again decline jurisdiction because the Acts would not apply.

Based on the above considerations, I find the preponderance of evidence indicates that the interest the Tenants have in the property is higher than that of a right to possess as conveyed under a tenancy agreement and the nature of the relationship between the parties to be more than that of a landlord and tenant. I find that under the will of the Tenants' mother, the Tenants will be conveyed a 1/8 interest in the subject property upon completion of probate.

In light of the above, I decline to find jurisdiction to resolve this dispute.

Conclusion

I do not find the *Residential Tenancy Act* applies to this dispute and I have declined jurisdiction.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: April 29, 2011.

Residential Tenancy Branch